Public Prosecutor v Ooi Sim Yim

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL TRIAL NO 14 OF 1984
FAIZA TAMBY CHIK JC
28 FEBRUARY 1989

Criminal Procedure – Sentencing – Ten years' imprisonment and six strokes of whipping for offence of unlawful possession of revolver – Three years' imprisonment for offence of unlawful possession of ammunition – Sentences to run consecutively – Grave and serious offences – Public will not be protected if lenient sentences were imposed – Firearms (Increased Penalties) Act 1971, s 8 – Arms Act 1960, s 33

The accused pleaded guilty to a charge of unlawful possession of a revolver contrary to s 8 of the Firearms (Increased Penalties) Act 1971 and a charge of possession of ammunition in circumstances which raised a reasonable presumption that the ammunition was likely to be used for any unlawful purpose contrary to s 33 of the Arms Act 1960. In mitigation, the accused submitted that he had pleaded guilty, was a first offender and had cooperated with the police.

Held:

Nowadays there have been too many cases of robbery being committed with the use of firearms. The public must be protected and it will not be likely protected if the court passes only lenient sentences. Accordingly, the accused is sentenced to a term of ten years' imprisonment and six strokes for the first charge, and three years' imprisonment for the second charge. Both terms of imprisonment are to run consecutively from and be backdated to the date of his arrest.

[*Editorial Note*: The accused has appealed to the Supreme Court vide Criminal Appeal No 05-15-89.]

Cases referred to

1 *PP* v *Chung Kwong Huah* [1981] 1 MLJ 316 (refd)
2 *PP* v *Teh Ah Cheng* [1976] 2 MLJ 186 (refd)
3 *Lee Chow Meng* v *PP* [1976] 1 MLJ 287 (refd)
4 *R* v *Blake* [1962] 2 QB 377 (refd)

Legislation referred to

Arms Act 1960 s 33
Firearms (Increased Penalties) Act 1971 s 8

Gooi Soon Seng (Deputy Public Prosecutor) for the Public Prosecutor.

Manjeet Singh Dhillon for the accused.

Cur Adv Vult

Faiza Tamby Chik JC: The accused, Ooi Sim Yim, pleaded guilty to two amended charges; one alleging unlawful possession of a Smith & Wesson .38 Special revolver contrary to s 8 of the Firearms (Increased Penalties) Act 1971, and the other alleging possession of 47 rounds of .38 ammunition in circumstances which raised a reasonable presumption that the ammunition is likely to be used for any unlawful purpose contrary to s 33 Arms Act 1960.

Mr Manjeet Singh in plea in mitigation had said all that could be said for the accused. He submitted that the accused:

(1) is a 37-year old bachelor coming from a large family of nine brothers;
(2) gainfully employed as a carpenter prior to his arrest;
(3) is a first offender;
(4) had pleaded guilty; and
(5) had informed Inspector Henry Tan that there was a clutch-bag under the front passenger seat containing more rounds of ammunition.

Mr Manjeet Singh Dhillon also urged the court to pass a concurrent sentence to the two amended charges starting from the date of arrest. The learned DPP Mr Gooi Soon Seng urged the court that under s 8 of the Firearms (Increased Penalties) Act 1971 the accused should be punished with imprisonment for a term which may extend to fourteen years and with a mandatory whipping with not less than six strokes. He also stated that this is a grave and serious offence.

Mitigating factors in a criminal trial are normally co-operation with the police; remorse shown as evidence by a guilty plea; and being a first offender.

Today there have been too many cases of robbery being committed with the use of firearms. Defenceless men and women including tourists had become victims of robberies and sometimes police officers and security guards have been shot at freely and some were injured and killed as a result of these attacks by robbers who were armed.

As Chan J said in *PP* v *Chung Kwong Huah*[1] at p 317:

> When the courts know that the unlawful possession and use of firearms are prevalent, then the time has come for the courts to show their disapproval by acknowledging that offences of this kind are grave and serious crimes, and that those who indulge in them must expect a severe sentence.

Abdoolcader J (as he then was) in *Teh Ah Cheng*[2] said:

> ... (it) must be made abundantly clear that in the light of the appalling increase in crimes involving violence and the unlawful possession and use of lethal weapons, society is crying out 'enough is enough' and is no longer in any mood to tolerate such offenders.

In *Lee Chow Meng* v *PP*,[3] Abdul Hamid J (as he then was) held:

(1) the court is entitled to take judicial notice of the fact of the prevalence of the commission of offences involving firearms in Kuala Lumpur;
(2) in the circumstances of this case, the learned President was justified in ordering the sentences of imprisonment to run consecutively.

The public must be protected and it will not be likely protected if the court passes only lenient sentences.

As Hilbery J in *R* v *Blake*[4] at p 383 said:

> It is of the highest importance perhaps particularly at the present time, that such conduct should not only stand con-

demned, should not only be held in utter abhorrence by all ordinary men and women but should receive, when brought to justice, the severest possible punishment. This sentence had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others, and it was meant to be a safeguard to this country.

I agree with those views and I am sure all ordinary men and women in this country also agree with those views. I am of the opinion they apply in this case. Accordingly, I sentence the accused to a term of ten years' imprisonment and six strokes for the first charge, and three years' imprisonment for the second charge. Both terms of imprisonment are to run consecutively, the first term of imprisonment is to run from and be backdated to the date of his arrest, and the second term of imprisonment is to run from the expiry of the first term of imprisonment.

Order accordingly.

Solicitors: *Lawrence Dhillon & Associates.*

Reported by *Ng Sheau Jiuan*

Chong Kim Loy v Timbalan Menteri Dalam Negeri, Malaysia & Anor

HIGH COURT (PENANG) – CRIMINAL APPLICATION 54-20-86
EDGAR JOSEPH JR J
6 FEBRUARY 1989

Constitutional Law – Arrest by police – Rights of person arrested – Right to be informed of power by virtue of which arrest effected – Right to be informed of grounds of arrest – Right of arrested person to be produced before magistrate – Whether exluded by statute – Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3, 5 & 6 – Federal Constitution, arts 5 & 149

Preventive Detention – Arrest and subsequent detention pursuant to statute – Arresting officer referring to relevant and irrelevant provisions of statute – Period of detention allowed pending investigation – Whether approval of Minister necessary for further detention pending investigation – Whether investigations undertaken – Detention order made following report by inquiry officer – Whether inquiry officer had discharged his statutory duties – Necessary details to be included in detention order – Omission from order that Minister was satisfied that it was necessary to detain person in the interest of public order – Whether order valid – Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3, 5 & 6

The applicant sought a writ of habeas corpus whereby he challenged both the validity of a detention order made by the Deputy Minister of Home Affairs under and by virtue of the provisions of s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') and his detention thereunder. It appeared that the applicant had been arrested on 9 July 1987 by a police officer who affirmed that he had reason to believe, and did in fact believe, that there were grounds which would justify the detention of the applicant under s 6(1) of the Act as the applicant had been and was associated with activities relating to or involving the trafficking of dangerous drugs. The officer made a police report later wherein he stated that there were grounds which would justify the detention of the applicant under 's 6(1) or s 6(3)' of the Act. The applicant was detained in a police station pending investigations. Following investigations by the police and the submission of reports from the police and the inquiry officer pursuant to the Act, the Deputy Minister made a two-year detention order against the applicant on 4 September 1987. The order was served on the applicant the next day and a day later he was taken into a detention centre. It was contended for the applicant that the powers of arrest given to a police officer under s 3(1) of the Act had to be exercised with a view to detaining a person under s 6(1) and not under s 6(3) of the Act and that since in the instant case the arresting officer had invoked his powers of arrest under s 6(1) or s 6(3) of the Act the detention of the applicant was unlawful. The second point taken on behalf of the applicant was that the maximum period of detention pending inquiries under s 3(2) of the Act was 60 days but that proviso (c) to the section had not been complied with in that the Minister had not given his approval to the detention of the applicant for more than 14 days. Alternatively, it was argued that if there was no requirement that the approval be given within 14 days the Minister had to give his approval as soon as reasonably possible thereafter. It was said that, as there was no evidence showing compliance with these requirements, the applicant's continued detention was unlawful. The third point argued for the applicant was that, although the applicant's wife had stated in her affidavit filed in support of the application that no investigations whatsoever had been carried out by the police or anyone during the applicant's detention at the police station, the police officer making the investigations for the purpose of submitting a complete report to the inquiry officer and the Minister had not gone on affidavit to deny the allegation. The applicant's continued detention was therefore unlawful. The fourth point advanced for the applicant was that the affidavit of the inquiry officer revealed that he did not carry out his own independent inquiries with a view to verifying the results of the police investigations but instead had relied on the full face value of the complete report of investigations made by the police and that he had therefore failed to discharge his statutory duties under s 5(2) of the Act. The fifth point taken on behalf of the applicant was that the detention order was bad on its face in that there was no reference in the order to the Minister being satisfied that it was necessary in the interest of public order that the applicant be detained for a period not exceeding two years. The sixth point raised on behalf of the applicant was that the affidavit of the arresting officer revealed that there had been a violation of the applicant's constitutional right to be informed, as soon as may be, of the reasons for his arrest, as enshrined in art 5(1) of the Constitution. It was contended that it was not enough for the arresting officer to inform the applicant that the latter had been involved in activities involving drugs; and that it was essential to add the words 'trafficking in drugs'. The final point taken on behalf of the applicant was that there had been a contravention of art 5(4) of the Constitution by reason of the fact that the applicant had not been produced before a magistrate within 24 hours after his arrest and detention at the police station.

Held, dismissing the application:

(1) It is obvious that an arrest by a police officer pursuant to the provisions of s 3(1) of the Act has to be on the ground that he has reason to believe that there are grounds which could justify detention under s 6(1) of the Act and nothing else.